UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION IX
75 Hawthorne Street
San Francisco, CA 94105

November 21, 2005

Joy Jaiswal
U. S. Army Corps of Engineers
Los Angeles District, Regulatory Branch
CESPL-PD-RN
P.O. Box 532711
Los Angeles, California 90053-2325

Subject: Port of Los Angeles Channel Deepening Project Additional Disposal Capacity Supplemental Notice of Intent (SNOI) to Prepare a Supplemental Draft Environmental Impact Statement (SDEIS)

Dear Ms. Jaiswal:

The Environmental Protection Agency (EPA) has reviewed the Notice referenced above. Our review is pursuant to the National Environmental Policy Act (NEPA), Council on Environmental Quality (CEQ) regulations (40 CFR Parts 1500-1508), and Section 309 of the Clean Air Act. Our detailed comments are enclosed.

The Port of Los Angeles (Port), in consultation with the U.S. Army Corps of Engineers (Corps), is seeking to provide additional disposal capacity for all sediments that require removal as part of the Channel Deepening Project. In response to the original NOI for this project (November 2004), EPA expressed concerns that the proposed project may not comply with the Federal Guidelines for wetlands permitting (Clean Water Act (CWA) Section 404(b)(1) (40 CFR Part 230)). The comments in our January 13, 2005 letter are incorporated by reference. We have met with the Port and the Corps on multiple occasions since that time to discuss our comments and provide recommendations.

We note that the project purpose has been expanded to include future port development and beneficial reuse of dredged material from the Deepening Project to support that development. As we have stated in our meetings, there is additional information that the SDEIS should include in order to assure compliance with NEPA and the CWA, including the following: an analysis of a reasonable range of alternatives; information regarding the source and volume of material needing disposal; the impacts associated with a potential tern nesting island; and careful evaluation of impacts to air quality and socioeconomics.

When the SDEIS is released for public review, please send (3) copies to the address above (mailcode: CMD-2). If you have any questions or would like to discuss our comments, please contact Summer Allen, the lead reviewer for this project. Summer can be reached at 415-972-3847 and Brian Ross in EPA's Wetlands Regulatory Office can also be contacted at 415-972-3475.

Sincerely,

Duane James, Manager
Environmental Review Office

Main ID# 003318
Enclosure: Detailed Comments

cc: Dr. Ralph Appy, Port of Los Angeles
John Foxworthy, Port of Los Angeles

EPA DETAILED COMMENTS ON THE SUPPLEMENTAL NOTICE OF INTENT TO PREPARE A SUPPLEMENTAL DRAFT ENVIRONMENTAL IMPACT STATEMENT, ADDITIONAL DISPOSAL CAPACITY, NOVEMBER 21, 2005

Compliance with Clean Water Act Section 404(b)(1) Guidelines

Purpose and Need for Proposed Federal Action

In October 2000, the Corps and the Port of Los Angeles published a Final EIS (FEIS) for *Port of Los Angeles Channel Deepening Project*, which proposed to deepen the Port's Inner Harbor channels to accommodate the most modern vessels in the commercial container fleet. A series of Environmental Assessments (EAs) in 2002, 2003, and 2004 further modified specific aspects of the original project. The current SNOI proposes to supplement these previous NEPA documents to provide additional dredged material disposal capacity of approximately four million cubic yards, "as a result of material generated from project and contract modifications." We note that a significant amount of this excess dredged material may have resulted from unauthorized dredging outside the project scope, especially by over-deepening. EPA has initiated a Clean Water Act (CWA) compliance investigation concerning this over-dredging.

We appreciate that the Corps and Port have expanded their purpose statement to include "beneficial re-use of dredged material by constructing additional lands for eventual terminal use." This expansion of project purpose will support a more appropriate range of alternatives. However, we are concerned that these fills will enable future Port expansions that have not been independently evaluated or approved. As we have stated in our previous comments and during our meetings, beneficial re-use of dredged material does not preclude the need to avoid filling waters of the U.S.

> *Recommendations:*
> The SDEIS should explain the circumstances and project configurations that have led the Corps to determine that the disposal sites identified in previous NEPA documents are not adequate. The SDEIS should include a complete accounting of the amount of excess dredged material by pre- and post dredging bathymetry for all channel or berth areas dredged. It should include potential opportunities for the beneficial reuse of this material other than in creating new landfill (see the *Alternatives* discussion below).

Alternatives Analysis and Discharge to Waters of the U.S.

Discharge of dredged or fill material into waters of the U.S. is prohibited under the CWA unless there is a demonstration that the discharge is the Least Environmentally Damaging Practicable Alternative (LEDPA) for achieving the basic project purpose. The SDEIS must clearly establish that the location and sizes of any proposed new fills represents the LEDPA. To meet this requirement, it must show that the proposed fills are (a) unavoidable (necessary for near-term port operations), (b) must occur in the locations proposed, and (c) that they are of the minimum size necessary. EPA would object to any discharge to waters of the U.S., including special aquatic sites, that is avoidable and which is not the least environmentally damaging

practicable alternative to achieve the basic project purpose. For fills that are allowed under the LEDPA, full mitigation for unavoidable direct and indirect impacts will be necessary, and the SDEIS should be clear in describing the mitigation credits needed and available under each alternative.

The action alternatives described in the SNOI do not span the full range of alternatives that could eventually occur under the proposed project because the alternatives are derived from different compilations of project elements (including options for both fills and habitat enhancement projects).

Recommendations:
The SDEIS should clearly establish that any proposed new fills are necessary to support near-term port expansion needs, are minimized in size to support that use, and must occur in the locations proposed.

The SDEIS should include a range of alternatives that truly spans the reasonable options for meeting the stated project purpose. Our specific recommendations for Alternative 1 (Port Development) and Alternative 4 (Ocean Disposal/Minimal Port Development) are the following:

Alternative 1 should include the fill for the tern nesting island. This would represent the maximum development alternative, as its name implies. It would require no ocean disposal, but would require 74 mitigation credits.

Alternative 4 should <u>not</u> include the nesting island, fill at Consolidated Slip, or fill of Berth 243-245. It would result in no Port expansions, but would be a net generator of approximately 17 mitigation credits.

For each alternative disposal location, there should be a full description of the habitat and environmental conditions of each site. While we note that future State and Federal environmental documents and permits may be required prior to any development of land created as a result of this project, the reasonably foreseeable future use of each site should be described. The anticipated environmental impacts of both construction and future use of the site should be quantified in as much detail as possible, and mitigation proposed as appropriate. This is especially important for any locations where disposal operations would create dry land or where it is reasonably foreseeable that partial filling of waters of the U.S. may be augmented in the future to create dry land (for example, any areas identified in previous NEPA and/or CEQA documents as possible future Port expansion locations).

Additional disposal options that should be discussed in the SDEIS, and included as project elements as appropriate, include:

- placement of excess dredged material back into areas identified as having been over-dredged during this project; and

- storage, for future beneficial re-use, at aquatic and upland locations throughout the Los Angeles region, specifically to include the Port of Long Beach (POLB) Western Anchorage Sediment Storage Site and other pre-authorized and fully mitigated fill projects in the Los Angeles area including but not limited to projects within POLB (consistent with the LA Regional Contaminated Sediment Task Force Long-Term Management Strategy).

The Initial Study determined that the project is located within an area designated as essential fish habitat for coastal pelagics and Pacific groundfish species and would permanently remove 70 acres of essential fish habitat for managed species. The Port and Corps should coordinate with the National Oceanic and Atmospheric Administration (NOAA) to identify avoidance and mitigation measures.

Consolidated Slip Issues

EPA appreciates the revised language in the SNOI clarifying that no dredge or fill activities can take place at Consolidated Slip absent coordination with and approval by EPA. As you know, the Consolidated Slip is part of the Montrose Superfund site. However, we continue to recommend that fill for a capping operation at Consolidated Slip not be included in all of the action alternatives. We understand that the Port is actively engaged in technical studies that could support dredging and/or capping operations in Consolidated Slip. The details of such studies should be coordinated with EPA's Superfund and TMDL staff in order to maximize the possibility that they may help streamline EPA's decision-making process.

Recommendations:
We recommend that the Port contact Superfund's Carmen White (415-972-3010), and Water Division's Peter Kozelka (415-972-3448) as soon as possible to coordinate the details of the Port's technical studies concerning dredging and/or capping operations at Consolidated Slip.

Tern Nesting Island Issues

EPA has participated in two meetings regarding the tern nesting island component of the SDEIS. As we have noted at those meetings, a nesting island represents an impact and not an enhancement. Therefore, we have consistently recommended that the island not be included in Alternative 4. We understand that an island may turn out to be of value in the event that the endangered California least tern establishes a nesting colony there. However, construction of the island could come at the expense of many acres of shallow water fishery habitat. This habitat was initially created as mitigation for, among other things, loss of least tern foraging habitat.

Recommendations:
The SDEIS should clearly state the purpose for the nesting island and identify locations for the nesting island that minimize loss of existing shallow water habitat, while still meeting the minimum size requirements agreed to with the US Fish and Wildlife Service. As discussed above, Alternative 4 should not include the nesting island and would result

in a net surplus of mitigation credits for the project. Finally, as also noted above, we recommend including the nesting island in Alternative 1 instead of Alternative 2.

Air Quality

The Port of Los Angeles (POLA) is in a non-attainment area for three National Ambient Air Quality Standards (NAAQS): ozone, carbon monoxide (CO), and particulate matter less than 2.5 microns in diameter and particulate matter less than 10 microns in diameter (PM-10). The South Coast records among the highest annual and 24-hour concentrations of PM2.5 in the country. The area is classified "extreme" for 1-hour ozone, "severe" for 8-hour ozone, "serious" for PM-10, and "serious" for CO under the Federal Clean Air Act. Mitigation may be available to reduce the project's air emissions, including PM-10, diesel particulate matter (DPM), and ozone precursors [oxides of nitrogen (NOx) and volatile organic compounds]. Because of the air basin's extreme ozone nonattainment status, it is particularly important to reduce emissions of ozone precursors from this project to the greatest extent feasible.

The South Coast Air Quality Management District (SCAQMD) is involved in a process to identify and reduce air toxic emissions in the South Coast Air Basin (SCAB). SCAQMD conducted studies known as the Multiple Air Toxics Exposure Study (MATES I and II) to assess air toxic levels in the SCAB. Information from the SCAQMD indicates that mobile sources are a significant health risk to residents of the air basin. The large number of mobile sources using the POLA (ocean vessels, tugs, railroads, diesel trucks) contribute to toxic air emissions in the immediate project area. We note that marine vessels also contribute a large percentage of the annual NOx and diesel (or fine particulate matter) emissions at the POLA.

Recommendations:

The SDEIS should address the applicability of Clean Air Act (CAA) Section 176 and EPA's general conformity regulations at 40 CFR Parts 51 and 93 to this project. Federal agencies must ensure that their actions, including construction emissions subject to state jurisdiction, conform to an approved implementation plan. Upcoming diesel particulate matter regulations currently being developed by the California Air Resources Board in accordance with the Diesel Risk Reduction program, should also be considered.

The SDEIS should present the best available information for the various air pollutants, by source category, for each action alternative. A discussion of baseline toxic air contaminants (TACs) in the project area and a qualitative analysis of the potential impacts should be included for both ongoing activities and project-related activities. The Corps should contact the Southern California Association of Governments (SCAG) to ensure these additional disposal projects have been accounted for in the applicable State Implementation Plan (SIP) budgets. In addition, we encourage the Corps to reference the data and list of potential control measures being developed by the No Net Increase Task Force.

The SDEIS should address the feasibility of a Construction Emissions Mitigation Plan and additional measures to reduce emissions of DPM and

other pollutants from construction and operations at POLA (see more specific recommendations in our previous comment letter).

Environmental Justice

Environmental justice is an important consideration when assessing and mitigating impacts to ambient air quality, especially if transported to downwind communities. Lowering construction-related emissions would assist in reducing the project's air quality effects to these communities. Please see our specific recommendations and helpful resources in our January 13, 2005 comment letter.

Recommendations:
The SDEIS should demonstrate consistency with Executive Order 12898 and CEQ's guidance on addressing environmental impacts in low-income or minority populations and whether potential air quality impacts to these populations are disproportionately high and adverse compared to the general population or comparison group to be evaluated. It should include the steps taken or proposed to contact community organizations or local residents potentially affected by the proposed project. The SDEIS should address the feasibility of implementing mitigation to reduce the project's air quality effects on these communities and if mitigation was developed in consultation with the potentially affected communities.